



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Dawco Construction, Inc.

File: B-278048.2

Date: January 2, 1998

Richard D. Corona, Esq., and Sean Brew, Esq., Corona & Balistreri, for the protester.

Lis B. Young, Esq., Department of the Navy, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where record shows that evaluation was reasonable and consistent with the factors announced in the solicitation, selection of somewhat higher-priced, but much higher-rated proposal was consistent with solicitation that provided that technical factors would be equal in importance with price in the selection of a contractor.

DECISION

Dawco Construction, Inc. protests the award of a contract to Harper/Nielsen Dillingham Builders (HND) under request for proposals (RFP) No. N68711-96-R-2326, issued by the Department of the Navy for design and construction work on housing units and a housing office and community center. Dawco asserts that the agency's evaluation was unreasonable and that its selection decision was contrary to the stated evaluation factors, giving too much weight to technical factors.

We deny the protest.

On March 18, 1997, the agency issued the RFP for a firm, fixed-price contract for repair, revitalization, and improvement of 198 family housing units, as well as the design and construction of a new community center and a new housing office at the Shadow Mountain housing complex, serving the Marine Corps Air Ground Combat Center in Twentynine Palms, California. The solicitation provided for award to the offeror whose offer was determined most advantageous to the government, considering price and technical evaluation factors. RFP ¶ 1C.1. The RFP listed the following five technical factors in descending order of importance:

(1) design and construction; (2) past performance, contractor/architect-engineer (A-E)/subcontractor experience, and qualifications; (3) quality, durability and energy

efficiency of proposed materials; (4) subcontracting effort; (5) sustainable design, construction and recycling considerations. RFP ¶ 5B.2. The RFP stated, at ¶ 5B.2(1), that the evaluation of design and construction, the most important technical subfactor, would be

based on the quality of the submitted design for each model type for the 198 units of the Shadow Mountain Housing site as shown by the exterior elevations and basis of design. The evaluation of the Housing Office and Community Center shall be based on the quality of the building elevations design, and the landscape plans and other amenities provided.

With regard to the second most important technical subfactor, past performance, contractor/A-E/subcontractor experience, and qualifications, the RFP provided, at ¶ 5B.2(2), for consideration of

the offeror's reputation for satisfying its customers by delivering quality work in a timely manner at a reasonable total cost. Also includes an offeror's reputation for effectiveness of management, and commitment to customer satisfaction.

The RFP stated that the evaluators would consider (a) the similarity of experience in scope, dollar value, and complexity to the instant effort; (b) the degree of satisfaction expressed by the customer; (c) the timely completion of the project; and (d) the qualifications and experience of the entire design/build team. Id. In evaluating the team's qualifications and experience, the RFP provided that the Navy would consider the proposed management team, including "resumes of the contractor's principals, project manager, project engineer, and superintendent"; resumes of the proposed A/E's management team; and the clarity and adequacy of the team's management roles and responsibilities. Id.

Ten offerors submitted proposals by the due date of May 30, and the agency referred those proposals to a technical evaluation board (TEB), which completed its evaluation 2 weeks later. The board determined that none of the proposals conformed wholly to the solicitation requirements and that discussions, with all 10 offerors in the competitive range, would be necessary. By letters dated July 22, the Navy sent each offeror questions and requests for clarifications.

In its letter to the protester, the Navy advised Dawco of unfavorable reports received in connection with [deleted]. Further, the Navy asked the protester [deleted]. The protester responded to the agency's questions by the required date of August 1; however, Dawco declined to identify [deleted], advising the Navy that, [deleted]. With regard to its design team, the [deleted].

The agency held further discussions with the offerors and requested submission of best and final offers (BAFO) by August 29. Upon review of the BAFOs, the agency rejected one offer for lack of adequate surety information. Of the other nine offers, Dawco submitted the lowest price [deleted], with HND's price second low (\$13,997,265). In the technical evaluation, Dawco ranked eighth of nine offerors, with HND ranked second.¹ Based on HND's relatively low price and high technical rating, the Navy awarded a contract to HND on September 8. After receiving a debriefing, Dawco filed this protest on September 24.

Dawco challenges the Navy's evaluation of its technical proposal. Further, Dawco contends that the agency gave more weight to technical factors than to price factors in its selection decision, contrary to the selection criteria, which stated that price and technical factors would be equal in weight.

We will examine an agency's evaluation and selection decision to ensure that they are reasonable and consistent with the criteria listed in the solicitation. Sarasota Measurements & Controls, Inc., B-252406.3, July 15, 1994, 94-2 CPD ¶ 32 at 4. The protester's disagreement with the agency does not render the evaluation unreasonable; further, in a negotiated procurement, there is no requirement that award be made on the basis of lowest price unless the RFP so specifies. DDD Co., B-276708, July 16, 1997, 97-2 CPD ¶ 44 at 3. Price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. ValueCAD, B-272936, Nov. 7, 1996, 96-2 CPD ¶ 176 at 4. Awards to offerors with higher technical ratings and higher prices are proper so long as the result is consistent with the evaluation criteria, and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the price difference. Aumann, Inc., B-245898.3, B-245898.4, July 22, 1992, 92-2 CPD ¶ 35 at 4. The record here supports the evaluation of Dawco's proposal and the selection of HND for award as reasonable and consistent with the criteria listed in the RFP.

Under the most important technical subfactor, design and construction, Dawco's proposal received a rating [deleted]. The evaluators concluded that, while Dawco had [deleted]. Further, Dawco did not offer to provide much in the way of [deleted], as compared with other offerors; the awardee's proposal, for example, featured [deleted].

¹The proposals were evaluated using an adjectival scheme--excellent, highly acceptable, acceptable, marginal, and unacceptable, with plus and minus ratings possible for each adjective. Using this scheme, the evaluators first rated the proposals under each of the five technical subfactors; those ratings then were consolidated in an overall technical rating for each proposal. Dawco's technical proposal was rated "acceptable minus" overall; the awardee's proposal was rated "highly acceptable."

Despite having access to the evaluation record and the detailed rationale for the agency's conclusion, Dawco does not dispute any of the evaluators' specific findings under the design and construction subfactor. Instead, Dawco argues that in considering the "amenities" provided by the offerors for the family housing units, the agency improperly applied the evaluation criteria. The protester points out that, with regard to the evaluation of design and construction, the RFP uses the word "amenities" in connection with the housing office and community center, not in connection with the family housing units. RFP ¶ 5B.2(1), quoted above. The evaluators here considered amenities proposed for the family housing units, which, the protester contends, was contrary to the express terms of the solicitation and resulted in an improperly high rating for HND's proposal, as compared with its own proposal.

Part 2 of the RFP addresses the design/construction criteria; part 2A relates specifically to the housing unit revitalization. (Part 2B contains the design, engineering and construction requirements for the housing office and community center.) It includes specific requirements and minimum acceptable design and construction standards for the revitalization effort, paragraphs 2A.2 (Site Work) through 2A.17 (Energy Efficiency and Sustainable Design). Paragraph 2A.18, Desired Items, specifically states that in addition to the "minimum" requirements identified in the previous paragraphs, the Navy considered certain amenities "desirable" for the housing units, including, as follows: storage system (closet organizer in master bedroom and bedroom closets; glazing (tinted interior panes in dual-pane system); motion sensor lighting for the front entry; solar tube-type skylight for single-story units; kitchen countertops and backsplash; and a lazy susan system for the kitchen cabinets. Therefore, contrary to the protester's assertions, the RFP provided for the precise design enhancements proposed by HND and considered by the TEB in awarding HND's proposal a high rating.

Under the second most important subfactor--past performance, experience, and qualifications--Dawco's proposal was rated [deleted]. The agency found that the protester's past performance record and experience [deleted]; the proposal contained no evidence of [deleted]. As noted above, [deleted]. In addition, Dawco had provided no data on [deleted], and the evaluators also found the proposal unclear regarding [deleted].

With respect to its failure to submit [deleted], Dawco asserts that the RFP did not require submission of a resume for that position and thus that, in assigning [deleted] rating to its proposal in this area, the agency did not conduct the evaluation in conformance with the RFP. While the RFP did not "require" offerors to designate a project engineer, paragraph 5B.2(2) of the RFP, quoted above, specifically advised

offerors that the resume of the project engineer, and by implication the failure to designate a project engineer, would be considered in the evaluation. We thus see no basis to conclude that the TEB acted either unreasonably or contrary to the language of the RFP in treating Dawco's approach [deleted].

Dawco also questions the evaluation of its past performance [deleted]. Dawco points to a letter forwarding the agency report to our Office in which Navy counsel referred to Dawco's [deleted]. Dawco notes that, during discussions, the Navy [deleted]. In this regard, Navy counsel advises our Office [deleted] review of the record reveals no evidence that Dawco's rating in this area was based on [deleted]. In its proposal, Dawco referred to [deleted]; the protester presented no other evidence of [deleted]. Under these circumstances, we find nothing unreasonable about the rating assigned to Dawco's proposal by evaluators in this area. See Shirley Constr. Corp. 70 Comp. Gen. 62, 64-65 (1990), 90-2 CPD ¶ 380 at 3-4.

We further conclude that the record supports the selection of HND as reasonable and consistent with the selection criteria in the solicitation. HND's price was second low overall, next to Dawco's, and its proposal was ranked second high. Given that the solicitation provided for equal consideration of price and technical factors, the record contains no basis for concluding that the selection of HND's much higher-rated proposal over Dawco's somewhat lower-priced one was either unreasonable or inconsistent with the RFP. See Sach Sinha and Assocs., Inc., B-241056.3, Jan. 7, 1991, 91-1 CPD ¶ 15 at 3-4, recon. denied, B-241056.4, May 21, 1991, 91-1 CPD ¶ 487.

The protest is denied.

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